

To: Charles Turner
From: Frank Burbank
Date: October 1, 2003
RE: Comments Received for the Procedures for Shutting Down Sources

The following document is a summary of the comments that have been received since July 2003 on the procedures guidance document. When appropriate the response to the transmittal have been included as well. The use of *Italic*, **bold**, or ~~strikethrough~~ font is taken directly from the original transmittals.

In general, most comments and suggestions were incorporated into the document. The one item that was not accepted concerns the Mutual Agreement Letter and the requirement that this document be signed and notarized. While this letter does not match the correspondence requirements of 9 VAC 5-20-230 it has been decided to continue the use of this document.

The regulatory requirement that a "shutdown" does not become final until between 6 months and one year after the initial tentative letter has been issued has been included in the Summary Section of the procedure guidance.

From: James B. LaFratta

Date: July 29, 2003

Although they are still draft, I'm using the guidance and template letters for "mutual" shutdown of a couple of facilities. In Item 7 of the mutual shutdown letter template, what does the phrase "successors in interest" mean legally? Would a new owner (not affiliated with current permit holder and owner of facility) fit into this definition??

Response: Tue 8/5/03 11:31 AM

I have spoken with Michael Dowd and he has confirmed that the term successors in interest will apply to any new owners of the facility or the site. This is a standard legal term so there is no formal definition available to us. Mike prefers that the term remain in the letters. I will try to expand on the definition within the body of the text.

Comment from Mashaw, David, Wed 7/30/03 8:38 AM

These procedures need to address the future permitting applicability/status as it pertains to a permanently shut down emissions unit/facility. If a unit/facility is permanently shut down, and the owner, or a new owner, wishes to re-start the unit/facility at a later date, the unit/facility should then be considered a new source for permitting applicability, subject to NSR and, potentially, BACT. This is based on the obvious logic that there is no other reason to require the permanent shut down of any unit/facility. Certainly, the emissions inventory can not be the only reason for such a policy. Granted, this position is not sanctified in our new NSR regulations, nor was it mentioned in the old ones, but it must be held as the cornerstone of our procedures for shutdowns, otherwise, why bother. These procedures need to include this point in the

"Significance of..." section (§ 5.0) as well as the notification letters to the owners.

Perhaps I have missed the point of the shutdown requirement, but I honestly can not think of any other valid reason to require an official shutdown other than the above.

Comment from Lightfoot, Linda Wed 7/30/03 10:08 AM

Following are my comments on this document:

Section 2.0: Regulatory Provisions for Shut Down

- Shut down is also mentioned in 9 VAC 5-80-1320 A.1.d. of Article 6
- 9 VAC 5-80-2160 has been repealed in the current version of the regulations (May 1, 2002 amendment date)

Section 4.0: Procedures for Shutting Down, and

Section 7.0: Reflecting the Shut-down in the CEDS database

These procedures address permitted units. How are unpermitted units that shut down to be addressed? Unpermitted units still must be removed from the CEDS database, but there is no mechanism to enter such an action as a permitting action. For permitted sources, we complete the event fields to issue the permit, then rescind the permit after issuance. How are we to enter, as a permit action, a shut down for an unpermitted unit?

Section 4.3: Mutual Decision

In TRO, the regional director doesn't sign the letter until the source signs first, notarizes, then returns it. He will not sign the letter prior to the source signing it. We have been adding wording instructing the source to sign, notarize, and return the original letter.

Comment from Cash-Robertson, William, Wed 7/30/03 10:55 AM

1. "supersede" is the correct spelling.
2. Sec 1.0.4: A list of these citations are is provided...
3. Sec 2.0.2: Very good to explain this. Thanks!
4. Sec 3.0.1: initiating showdown shutdown
5. Sec 3.0.2.a: I just don't understand what this sentence is saying. Perhaps a little extra explanation might be needed. Does this mean an unreasonably long period before placing the unit back in operation?
6. Sec 4: Regional offices need to decide which section (permits or compliance) would/should send these letters. Suggest that the guidance indicate that this is a regional decision that must be made so that somebody is defined as responsible for carrying out the steps in this guidance.
7. Sec 4.4.4: Suggest adding a note here to update CEDS at the same time as the final determination letter goes out, so that the letter-writer doesn't forget the CEDS part. Could reference sec 7.0 here.
8. Sec 7.0: There are several areas in CEDS that all must be changed simultaneously to "shutdown". First, in the Air Programs screen all programs/pollutants must be set to "shutdown" (either permanent or temporary). Second, an inspection should be entered

associated with the final determination letter that shows the facility is "In Compliance" with each shutdown program. The CEDS manual AIR_MANUAL_V3.DOC is silent on the steps for entering shutdowns, so this guidance should describe the preferred steps. Comment from Breathwaite,Troy, Wed 7/30/03 11:33 AM

".....the only area that I feel was not as well-addressed is the scenario where a source objects to the DEQ initiation of shutdown procedures. It is not clear how we will handle such a scenario if the source objects and their objection is not in DEQ's opinion "sound". If they object loudly enough, do we leave them alone? Or do we push forward with shutdown procedures anyway?

Comment from Halcrow, Barry, Wed 7/30/03 11:36 AM

I. Main item. Why can we not delete the entire mutual letter model? My theory of policy: clarify and require minimum implementation effort. Why would the source send DEQ a letter requesting a shut down, DEQ send them a shut down letter to sign and notarize, and they send the shut down letter back to DEQ to sign, and DEQ sends them the final completed shut down letter? For the sources we can not find, we only do two letters by regulation. For those who are happy to shut down, we only need one DEQ letter--the final shut down letter that acknowledges their letter with the final determination, simply as required by the regulation. Their simple letter and our simple letter should be all the documentation required for mutual agreed upon shutdowns. One has to ask, what are the DEQ rewards for such efforts and legal overkill on such a simple task?

II. Main item. Linda noted existing units missing from the policy. Our goal is make sure these units are shut down so Article 6 can be applied to them in the event of re-start up. Please check with Bob to see if he has some thing buried in the REGS for you to use on this issue.

III. Miscellaneous

A. CEDS is CEDS not CEDs.

B. In all the letters, please make the option [emissions unit or facility].

C. The REG uses shut down, policy has shutdown and shut-down.

D. If we must use the mutual shut down letter, item 5. Upon signature of this document by the Department and by [source name], the [facility or emissions unit] shall cease operations. Can you change to: **Upon completion of this document by [source name], return of the document to the Department, and signature of the Department, the [facility or emissions unit] shall cease operations.** Can you move it to item 1? This makes it clear to the source what to do with the letter; otherwise, we need to put another cover letter on our letter with instructions. If you agree, think about moving DEQ signature to the end. Makes it flow better--first the source, then DEQ, and the document is complete.

Comment from Pinzel, Kenneth Wed 7/30/03 2:18 PM

I do have a comment. I may have missed it as I read through rather quickly, but do you want to address who at the facility can sign the mutual agreement letter? I suspect we may want the "responsible official" as defined in the reg.

Response 8/5/03

The decision of whether a representative of the owner meets the definition of a responsible official will be left up to the individual regions. In general we agree that the person should meet the conditions of 9 VAC 5-20-230.

Comment for Sellers, David, July 7/31/03

32 Comments on the Draft Final Shutdown Procedures.

1. In Memo Subject Line, change Shut Down to Shutdown. The noun “shutdown” is always one word. The verb phrase, such as “to shut down a unit”, is always two words. Our regulations are generally consistent in these conventions. Use “shutdown” in the following locations:

- a. Line 4 of the Title Page “Procedures for Shutdown...”
- b. Table of Contents, Lines 2.0, 5.0, and 7.0; and the three attachments.
- c. Page 1, Paragraph 1.0.4, bullet 1; Paragraph 2.0 title, and Line 1; Page 3, Paragraph 4.2.1, Line 4; Paragraph 4.2.1.d, Line 2; Page 4, Paragraph 4.4.2.c, Line 3; Paragraph 5.0 Title, and Line 2; Page 5, Paragraph 5.1.1, Line 1; Paragraph 7.0 Title, and Line 2; Attachments paragraph, Line 9; Mutual Shutdown Letter, Title Lines 1 and 2, and Paragraph 2, Line 1 (“permanent shutdown”); Mutual Shutdown Letter Page 2, numbered paragraphs 6 and 7; Tentative Shutdown Letter, Title Lines 1 and 2; Tentative Shutdown Letter Page 2, Lines 3, 4, and 14; and Final Shutdown Letter, Title Lines 1 and 2.
2. In the Memo Subject line, Line 1 of the memo body, and the next Title page, consider changing “Permitted” to “Stationary”. This would allow our policy guidance to address the same broad spectrum as the regulation (inventory management and permitting of registered emissions units). Removing sources from the emissions inventory is a major reason for the need for these letters. Adjusting the permits is another reason.
3. In Line 3 of the memo, change “supercedes” to “supersedes”.
4. Page 1, Paragraph 1.0.2, Line 1: Consider replacing “the regulations” with “9VAC 5-20-220A”, and adding at the end of the sentence on Line 2 “, and removal of the source or emissions unit from the inventory”.
5. Page 1, Paragraph 1.0.4, Bullet 2: Consider adding “, with the final decision immediately effective on the date of the letter”.
6. Page 1, Paragraph 1.0.4, Bullet 3: Consider adding “, effective either within six months of the Tentative Shutdown Decision letter”, or one year after the date of that letter.
7. Page 1, Table: Change third line to “Federal Acid Rain Permits”.
8. Page 2, Paragraph 3.0.2, Line 2: Delete sentences two and three, and replace with “Either of the following reasons, sufficient by itself, should be asserted in the source’s response to the tentative determination letter.”
9. Page 3, Paragraph 4.1.2, Line 2: Delete “in” before “the model letters”.
10. Page 3, Paragraph 4.2.1.a, Line 2: Change “have” to “has”.

11. Page 4, Paragraph 4.3.b, and Paragraph 4.4.4: Change “designees” to “designee”.
12. Page 4, Paragraph 4.4.2.c, Bullet 2, Line 1: Change “re-starting” to “restarting”.
13. Page 4, Paragraph 4.4.3, delete “reasoning such as”.
14. Page 4, add new Paragraph 4.4.3.c: “State the date that the final determination will be considered effective, within six months after the tentative decision was transmitted to the source, if the source did not reply to the tentative decision letter; or twelve months after the tentative decision date, if the source submitted a written reply.”
15. Page 5, Paragraph 7.0.1, Lines 1 and 4: Change “data bases” to “databases”, and “data base” to “database”.
16. Mutual Shutdown Form Letter, Page 2, Paragraph 3: After “revoked” consider adding: “If part of a larger permit, the applicable permit conditions are revoked, and the permit will later be amended to remove the revoked conditions.”
17. Tentative Shutdown Form Letter, Paragraph 1, Line 6: Change “responds” to “respond”.
18. Tentative Shutdown Form Letter, Paragraph 1, Line 8: Consider adding, for clarity, after “revoke the applicable permits” the following phrase: “or permit conditions, if part of a larger permit addressing other emissions units.”
19. Tentative Shutdown Form Letter, Page 2, Line 1: After “This decision will become final” add “within six months of the date of this letter”.
20. Tentative Shutdown Form Letter, Page 2, Line 1: Change “3” to “three”.
21. Tentative Shutdown Form Letter, Page 2, Line 5 and Line 14: Change “re-starting” to “restarting”.
22. Tentative Shutdown Form Letter, Page 2, Line 12: After “If” delete “no response is received by this regional office within three months, or if”.
23. Tentative Shutdown Form Letter, Page 2, Line 15: After “will become final”, add “one year after the date of this letter,”.
24. Tentative Shutdown Form Letter, Page 2, Line 16: After “revoked” consider adding: “If part of a larger permit, the applicable permit conditions are revoked, and the permit will later be amended to remove the revoked conditions.”
25. Final Shutdown Form Letter, Page 1, Title Line 2: Change “of Source or Unit” to “Decision”.
26. Final Shutdown Form Letter, Page 2, Line 2: Delete “final”. On Page 2, Line 3, Change “Upon making a” to “After the effective date of the”
27. Final Shutdown Form Letter, Page 2, Line 4: Change “9 VAC 5-80-****” to “9 VAC 5-20-220A”.
28. Final Shutdown Form Letter, Page 2, Line 4: At the end of the paragraph, add: “, or applicable permit conditions, if part of a larger permit.”
29. Final Shutdown Form Letter, Page 2, Numbered Paragraph 1, Line 2: After “revoked” consider adding: “If part of a larger permit, all references to the shutdown

emission unit in applicable permit conditions are revoked, and the permit will later be amended to remove or revise the applicable conditions.

30. Replace Numbered Paragraph 1 with the following: “[The final determination will be considered effective [specify date within six months after the date that the tentative decision was transmitted.]]” (if the source did not reply to the tentative decision letter); or “[The final determination will be considered effective twelve months after the tentative decision date, on [specify date].]” (if the source submitted a written reply).

31. Final Shutdown Form Letter, Page 2, Numbered Paragraph 2: At the beginning of the sentence, add “At that time”.

32. Our policy should address how we respond to a notification by the source that a registered or permitted emissions unit was restarted anytime prior to the end of the six or twelve month periods described in 9 VAC 5-20-220 B. We probably stop the shutdown procedures, and schedule an inspection visit.

From: Lightfoot, Linda Monday, August 04, 2003 10:12 AM

I have an additional comment to these procedures. I have a situation in which the permitted source has sold all equipment and vacated the site. I have no method to contact the source; the source is now non-existent. You may want to consider addressing this in the procedures. Since the source is non-existent, there is no one to whom I can send the "Tentative Decision" letter. Do I simply rescind/revoke the permit?

Response: August 4, 2003

I do plan to expand this section of the writer's guide, but since you have a source you can not find right now, I will get back to you. After speaking with Chuck and John Reinhardt it appears that there is little that has to be done if you can not find the source.

There does not appear to me so far that a standard has been developed on how long or detailed the search for the owner has to be. Can you tell me what you have done and who have you contacted (or tried to) to talk to the owners? Have you contacted the SCC to see if they have a contact?

I would place any records you have on your search for the owners in the permanent file. This would include the telephone numbers, email addresses, or mailing addresses you contacted and the dates of the attempted contacts. If you sent certified or registered letters, copies of the returned letters and receipts should be placed in the file. Perhaps you can summarize the attempts you made in a memo to your compliance manager. I have confirmed that there is no need for us to make a formal public notice on shutting down a plant. That will save us a good need of money.

After a thorough search for the owners, you can shutdown the site, and revoke the permit at your convenience.

From: Breathwaite,Troy Tuesday, August 05, 2003 11:25 AM

I have one other question pertaining to the draft shutdown procedures document. In the attached boilerplate letters and elsewhere in the document, it refers to the requirement for "emissions to go to zero" and subsequent removal from CEDS. It appears that these shutdown procedures may not work for landfills since even when closed, landfill

emissions almost never "go to zero" and it is unlikely that a landfill can be removed from CEDS since inspections are likely to still be required for a considerable period of time after official "closure". It seems that closed landfills will be better served using the permit rescission policy instead. My question is how does this revised shutdown policy relate to the permit rescission policy?? Or are they two separate and completely unrelated permit actions?? Thanks in advance.

Response: August 6, 2003

I will review the issue of closed landfills with Central office and the APMs. Landfills may be the exception that proves the rule. We will have to see. Thank you for mentioning the rescission policy memo. I did not know about this 1996 document. My first impression is that the two documents do not overlap. Shutdowns are for units that have cease operating, rescission are for units that are still operating but the laws have changed. Perhaps the rescission memo should be reissued just to bring it up to date now that Title V, Title IV and NOx trading are more or less complete.

Final Decision

The regulations were not written with closed landfills in mind and so they do not fit in to this discussion. The regulations give the regional offices full decision making responsibility to decide if and when to begin shutdown procedures. The decision to declare a landfill "shutdown" will be left to the regional offices on a case by case basis.

Transmittal to Regional Offices, August 12, 2003

I am currently reviewing the document and VAC regulations. I am also reviewing a separate but related subject of Rescinding a permit. A separate short policy guide on rescinding was issued in 1996. It appears that we will have to be careful in how we will use the terms rescinding and revoking a permit in the future. They are not the same thing.

According to the older guidelines, a permit is only revoked when the emission unit or the facility has been shut down permanently. A permit or individual permit conditions within a larger document are rescinded when the laws and regulations have been altered or deleted and no longer apply to the equipment. The emission unit itself is still operating normally.

I am not sure if the guideline you have reviewed should be expanded to include rescinding a permit. Please give me your opinions.

Response from, Scanlan, Mike Tue 8/12/03 11:48 AM

Regulatory shutdown, rescission, and revocation of a facility/permit seem shades of the same species. It would be helpful to combine them into a single document. By your description, rescission is the odd ball here. I still would like these related acts discussed together.

Response from, Sellers, David Tue 8/19/03 2:23 PM

I revised my comments on shutdown policy. This set is clearer than the set I sent you July 31. Two important issues:

1. Timing for final determinations needs to be addressed in the new policy. A six or twelve month period required before a final determination is a key issue. It's discussed in our regs (9 VAC 5-20-220), but not our old policy.

2. Most air permits now address multiple emissions units. If an emissions unit were determined to be shutdown, we wouldn't necessarily cancel the whole permit (I don't think). I suggested wording for the sample letters to accomodate this likely situation.

From: Halcrow, Barry Thu 8/21/03 5:02 PM

Some comments for you to consider.

1. Title Page: Procedures for Shut Downed Permitted Sources. Got to do some thing with it.

2. Page 1.

Permit program	Regulatory citation
----------------	---------------------

Federal Operating Permits (Title V)	9 VAC 5-80-180
-------------------------------------	----------------

Federal Operating Permits (Title IV Acid Rain)	9 VAC 5-80-540
--	----------------

State Operating Permits	9 VAC 5-80-950
-------------------------	----------------

Minor NSR Permits	??
-------------------	----

PSD/NA Permits	??
----------------	----

Table is missing new source review permit citations from: Article 6 and Article 8-- happens to be 90% of shut downs. I do not do enough non-attainment permits to give you citations on this subject.

3. Page 1. 1.0.5 The VAC regulations themselves do not describe the process of how a source is to be declared shutdown. The system of notification letters, and hearings described in this guidance document has been developed independently from the regulations and represent the official policy of the VADEQ.

Please take a look at 9 VAC 5-80-1930. You have fashioned this policy directly from this part of the REGS. DEQ selected the PSD procedures in the REGS to be the policy for all those other non-descript shut down situations in the REGS.

4. Page 3. 3.1.2 The regulations do not define who can be considered a representative of the source with the authority to make decisions regarding shutdown and permit revocation. The Regional Office permitting staff will have to decide this issue on a case-by-case basis.

Please review 9 VAC 5-20-230. The people who sign this document are the representatives of the source who make decisions about shut downs.

5. Page 7. 5.0.3 If after a reasonable effort the owner can not be located, the Regional Office has the authority to declare the facility as shutdown and to revoke any existing permits without reaching notification or agreement agreement or the owner receiving notification. As mentioned in Paragraph 3.4.4, it is advisable that an interoffice memo be added to the permanent files stating the date of the declaration of shutdown.

6. Page 8. 7.0.2 It is recommended that the regional office personnel routinely review CEDS data entrees to confirm that all of the facilities and individual emission units in Virginia that have stopped operations have been properly listed in the database.

7. Tentative shutdown letter. If no response is received by this regional office within three months, or if the VADEQ finds that the basis for the assertion is not sound or the projected date for re-starting allows for an unreasonably long period of inoperation, then the decision to consider the shutdown permanent will become final and the applicable permits will be revoked on XXXX (add six months from letter date).

8. Mutual shut down letter. Are you going to make the source attach a Certification Document from 9 VAC 5-20-230 to validate they can sign the shut down letter? Or is notary enough? APS has been pushing Certification Document for stuff sent to DEQ.

9. Final shut down letter. [A hearing was held on [date].] [After consideration of the owner's response,] the VADEQ has made a final determination that the [facility] is permanently shut down effective XXXX (add one year from tentative letter date). Upon making a final decision that a source is permanently shut down, the VADEQ is required by the Regulations to revoke all applicable permits (9 VAC 5-80-*****) effective XXXX (add one year from tentative letter date).

Accordingly, you are hereby notified that:

1. [All air permits] [The air permit] issued for the [facility], registration number [*****] and dated [date(s)], [is/are] will be revoked effective XXXX (add one year from tentative letter date).; and

2. The VADEQ of Environmental Quality will remove the [facility] from the air emission inventory and will consider its air pollutant emissions to be zero in any future air quality analysis; and

3. The [facility], or any portion thereof, shall not re-commence operation after XXXX (add one year from tentative letter date) unless it is authorized by a new permit issued under the applicable provisions of Chapter 80 of the Regulations.

From: Halcrow, Barry , Fri 8/22/03 9:11 AM

Previous comment 7. Tentative shut down letter. Forget first comment 7. On the first time through, I did not see the duplicate paragraph at the end included conflicting verbiage to the purpose of this letter (These issues would be addressed in the next letter if the source responds to this letter.).

This decision will become final on XXXX (add six months from letter date) and the applicable permit(s) will be revoked if the owner of the [facility] fails to provide, within 3 months of receipt of this letter, a written response informing the VADEQ that the shutdown of the [facility] is not to be considered permanent. This response shall include (1) the basis for the assertion that the shutdown is not to be considered permanent, and (2) the projected date for re-starting the facility. The response shall also include a request for a formal hearing if the owner wishes to exercise that right. The response should be addressed to:

Director, [name] Regional Office
Virginia VADEQ of Environmental Quality
[address]
[city or town], Virginia [zip code]

~~If no response is received by this regional office within three months, or if the VADEQ finds that the basis for the assertion is not sound or the projected date for re-starting allows for an unreasonably long period of inoperation, then the decision to consider the shutdown permanent will become final and the applicable permits will be revoked.~~

Response to Halcrow, Barry on Tue 8/26/03 2:17 PM

I have edited the document in response to most of your suggestions. I will ask Chuck Turner when he returns on the question of the "certification document" (number 8 on your list). The use of a notarized letter has been in place since 1999 but does not match the requirements of 5-20-230 as you noted.

I do have some questions one of the dates you suggest in item 9. You mention that the source will be considered permanently shut down effective one year after the date of the tentative letter. Depending on the respond of the owner can't this be between six and twelve months? Do you feel that permits can not be revoked until 12-months after notification? Is there flexibility in the regulations to revoke permits faster?

Response from Halcrow, Barry, Tue 8/26/03 4:55 PM

The shut down dates are a mess in the REGS. Did you see the PSD shut down procedure dates do not agree with 2-220 dates? Same story, different permitting programs have different requirements--they always seem to work in a vacuum when designing these programs. APS is left cleaning up the mess. Your re-write of the policy would help clarify this by listing these different dates or making the dates the same for all sources--your choice. The REGS only agree on when we mutually agree on shut down = any date we want to select.

We all like this option--gives flexibility on shut down and revoke permit date; can be today or next week.

In theory, the REGS allow a source to object to our proposed shut down, we override objection, and the source can start up the equipment in question before the "notification year" ends to terminate the shut down discussion. This is no problem to DEQ. If source had a permit, we do not have to amend or revoke or issue a new permit.

In practice, we only use these letters to shut down the entire facility--the source is gone and DEQ needs to clean up CEDS. For agree option of shutting down some specific piece of equipment, we would generally not use these letters, just amend the permit to de-list the equipment in the permit at the source. On a rare occasion, we would use these letters to shut down some specific piece of equipment at a source in the conflict mode: DEQ wants the permitting process to be used at that facility for new equipment, and the source is giving us grief on shutting down the old equipment.